

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

HELP OF SOUTHERN NEVADA¹

Employer

and

Case 28-RC-6198

**TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN, AND HELPERS,
LOCAL 631 affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks an election within a unit comprised of all full-time and regular part-time weatherization technicians employed by the Employer at its warehouse facility, located at 3565 West Harmon, Suite E, Las Vegas, Nevada. Contrary to the Petitioner, the Employer contends that it is not subject to the jurisdiction of the National Labor Relations Board because the degree of control exercised by state, county, and local governments over the programs administered by the Employer qualifies the Employer as an exempt “political subdivision” under Section 2(2) of the Act.³ In addition, the Employer contends that its activities do not sufficiently impact interstate commerce to implicate the Board’s exercise of jurisdiction. Based upon the reasons more fully set forth below, I find that the record establishes that the Employer is not a “political subdivision” within the meaning of the Act’s Section 2(2) exemption, that it meets the standards for asserting statutory jurisdiction, and, therefore, is subject to the jurisdiction of the Board.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are affirmed.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ Section 2(2) of the National Labor Relations Act provides in relevant part: “the term ‘employer’ . . . shall not include . . . any State or political subdivision thereof.” 29 U.S.C. § 152.

2. **Jurisdiction:** The Employer, Help of Southern Nevada, is a non-profit social service agency that offers a variety of services to low-income, disabled, and elderly citizens of Nevada. These services include the provision of emergency resources, community alternative sentencing for Nevada courts, and weatherization for housing units. The Employer was incorporated in Nevada in 1970, and has an office and warehouse facility located in Las Vegas, Nevada.

The Employer's programs are funded almost entirely by grants awarded to it by the State of Nevada and its political subdivisions. Many of these grants originate from Federal awards to the State of Nevada, which, in turn, awards the funds to Nevada grantees. Use of Federal funds requires the Employer to comply with additional Federal regulations attached to receipt of the funds. The Employer also receives private donations from Nevada corporations and citizens.

The grant award for the Employer's Weatherization Assistance Program from the Nevada Department of Business and Industry's Housing Division totaled approximately \$1.5 million for the fiscal year July 1, 2002 to June 30, 2003. Weatherization employees are required to attend a training program sponsored by Pacific Gas and Electric in Stockton, California. In 2002, the Employer sent ten employees to Stockton for this training. The employer paid approximately \$4,094 to Pacific Gas and Electric and \$745 to the Stockton Radisson Hotel, and each employee received a \$27 per diem during the five-day program. Thus, the Employer's training expenditures in California totaled approximately \$6,189, not including an undisclosed amount for airfare and a car rental. While the Employer purchases most of its weatherization program supplies from Lowe's and Home Depot in Las Vegas, certain supplies are not available in Nevada. For example, the Employer purchased four blower doors, used to identify leakages and improve home energy efficiency, from the Energy Conservatory in Minneapolis, Minnesota, in the past year. At the hearing, the Employer's Executive Director testified that each door cost approximately \$2,525, for an approximate total of \$10,000.

To be subject to the Board's jurisdiction, an Employer must meet the statutory definition of "employer" in Section 2(2) of the Act, as well as the applicable monetary jurisdictional standard. See *Management Training Corp.*, 317 NLRB 1355, 1358 (1995) (overruling the control test previously prescribed by *Res-Care*, 280 NLRB 670 (1986)). To qualify under the Act's "political subdivision" exemption, an entity must (1) be "created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate." *NLRB v. Natural Gas Utilities District of Hawkins County*, 402 U. S. 600, 604-05 (1971).

The Employer relies upon *Hinds County Human Resources Agency*, 331 NLRB 1404 (2000), to support its contention that it qualifies as an exempt political subdivision under the Act because its funding consists mainly of Nevada state grants. However, in that case, the Board determined that the employer was an exempt political subdivision because the county's governing body created the employer pursuant to an enabling state statute. *Id.* at 1404. The Board concluded that the enabling statute clearly directed the employer to operate under the control of Mississippi's local county government. *Ibid.*

Unlike the employer in *Hinds County*, the Employer here was not created by the Nevada legislature pursuant to an enabling statute, and there is no record evidence which indicates that the Employer constitutes an arm of state government. Rather, the Employer is a privately incorporated non-profit organization that, like many similar agencies, typically receives the bulk of its funding from state sources. This fact does not transform the Employer into an exempt political subdivision of Nevada. Similarly, nothing in the record suggests that the individuals who administer the Employer's programs are responsible to public officials or the general electorate under existing law. See, e.g., *NLRB v. Princeton Memorial Hosp.*, 939 F.2d 174, 178 (4th Cir. 1991). Thus, I find that Employer is not a "political subdivision" and otherwise satisfies the Act's definition of "employer."

A social service organization must have gross annual revenues of \$250,000 to satisfy the Board's discretionary monetary jurisdictional standard. See *Hispanic Federation for Development*, 284 NLRB 500, 501-502 (1987). The record reflects that the Employer's gross annual revenue exceeds \$250,000. Having met the statutory definition of "employer" and the applicable monetary standard, I conclude that the Employer is subject to the Board's jurisdiction.

The sole basis for declining jurisdiction over a charitable organization is a finding that its activities do not have a sufficient impact on interstate commerce to warrant the exercise of the Board's jurisdiction. See *St. Aloysius Home*, 224 NLRB 1344, 1345 (1976). The Employer, relying upon *Ohio Public Interest Campaign*, 284 NLRB 281 (1987), also contends that the Board should decline to assert jurisdiction because its activities have an insignificant effect upon interstate commerce. In *Ohio Public Interest Campaign*, the Board declined to assert jurisdiction over an employer, a non-profit corporation engaged primarily in grass-roots lobbying on behalf of Ohio consumers, despite the fact that the employer received \$36,000 in direct inflow of goods and services and its annual gross revenues exceeded \$1 million. *Id.* at 291. The Board found that the employer's operations constituted a political action organization and its impact "appear to be almost, if not exclusively, limited to matters concerning issues of public concern affecting Ohio residents and without a general impact on interstate commerce." *Id.* at 281. The Board also noted that it had never previously asserted jurisdiction over the class of employers to which the employer belonged. *Ibid.*

While the Employer here attempts to characterize the nature of its activities and impact upon interstate commerce as similar to that of the Ohio Public Interest Campaign, the facts reveal discernible differences between the two employers. The Employer exists to provide direct emergency services, weatherization of housing units and other social services to disadvantaged residents of southern Nevada, not to propagate political opinion. The successful provision of the Employer's services at the local level, which constitutes the essence of non-profit organizations such as the Employer, requires raw materials, goods, and skilled labor, all of which impact interstate commerce. Thus, while it is true that the Employer is a local organization serving local residents, its operations have a sufficient impact upon interstate commerce. Indeed, without the goods and training the Employer receives from points outside the State of Nevada, the Employer would be unable to render its services. Based on the record as a whole, I find that the Employer annually purchases and receives goods or services valued in excess of \$5,000 directly from points outside the State of Nevada. The Employer thereby satisfies the de minimus standard related to interstate commerce. See *Stamford Taxi, Inc.*, 332 NLRB No. 149, slip op. at

13 (2000) (citing *Pioneer Concrete Co.*, 241 NLRB 264 (1979), enfd. 637 F.2d 698 (9th Cir. 1981)); see also *Aurora City Lines, Inc.*, 130 NLRB 1137, 1138 (1961), enfd. 299 F.2d 229 (7th Cir. 1962) (concluding receipt of \$2,000 in indirect inflow materials not de minimus).

Finally, the Employer argues that asserting jurisdiction over the Employer would not effectuate the purpose of the Act because any industrial strife involving the Employer would not materially affect the flow of materials into the channels of commerce. As explained above, I find that the Employer's activities impact interstate commerce to a degree sufficient to warrant the Board's exercise of jurisdiction. Based on all of the foregoing, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:** The parties stipulated that all full-time and regular part-time weatherization technicians employed by the Employer at its facility located at 3565 West Harmon, Suite E, Las Vegas, Nevada, but excluding office clerical employees, guards, and supervisors within the meaning of the Act constitutes an appropriate bargaining unit. Based upon the parties' stipulation and the record as a whole, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time weatherization technicians employed by the Employer at its facility located at 3565 West Harmon, Suite E, Las Vegas, Nevada

EXCLUDED: All office clerical employees, guards, and supervisors as defined in the Act.

There are approximately 16 employees in the unit found appropriate.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in

an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN, AND HELPERS, LOCAL 631
affiliated with INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Region 28 Resident Office, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101, on or before July 16, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by July 23, 2003. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 9th day of July 2003.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board - Region 28

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177-2401-6750
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